Case 4:08-cv-00366-A Document 24 Filed 05/27/09 Page 1 of 3. DRAPELP 67 NORTHERN DISTRICT OF TEXAS FILED IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION CLERK, U.S. DISTRICT COURT Deputy RICHARD THEODORE THARPE, JR., 8 S Applicant, Ş VS. § NO. 4:08-CV-366-A § NATHANIEL QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL Ş JUSTICE, CORRECTIONAL § INSTITUTIONS DIVISION, S § Respondent. Ş

MEMORANDUM OPINION and ORDER

Came on for consideration the above-captioned action wherein Richard Theodore Tharpe, Jr., is applicant¹ and Nathaniel

Quarterman, Director, Texas Department of Criminal Justice,

Correctional Institutions Division, is respondent. This is a petition for writ of habeas corpus filed pursuant to 28 U.S.C. §

2254. On April 15, 2009, the United States Magistrate Judge issued his proposed findings, conclusions, and recommendation

("FC&R"), and ordered that the parties file objections, if any, thereto by May 6, 2009. On May 7, 2009, applicant filed his

¹The title of the document filed by Richard Theodore Tharpe, Jr., was "Petition for Writ of Habeas Corpus by a Person in State Custody," and he referred to himself as "petitioner" in the document. Consistent with the wording of 28 U.S.C. § 2254, the court is referring to the document filed June 5, 2008, as an "application" and is referring to Richard Theodore Tharpe, Jr., as "applicant."

written objections. Respondent has not made any further response. In accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, the court makes a de novo determination of those portions of the proposed findings or recommendations to which specific objection is made. United States v. Raddatz, 447 U.S. 667 (1980). The court is not addressing any nonspecific objections or any frivolous or conclusory objections. Battle v. United States Parole Comm'n, 834 F.2d 419, 421 (5th Cir. 1987).

For the most part, applicant's objections to the FC&R amount to nothing more than a restatement of the claims and arguments he presented in his application.

After having reviewed respondent's supplemental briefing in response to the court's May 12, 2009, order, the court is persuaded that <u>Caldwell v. Dretke</u>, 429 F.3d 521 (5th Cir. 2005), continues to be controlling on the issue for which respondent cited it in its answer and for which it was cited as authority by the magistrate judge. The holding in <u>Caldwell</u> compels the conclusion that the magistrate judge correctly recommended dismissal of applicant's claims 1 through 7 as time-barred. Applicant has not provided the court with anything that would justify an equitable tolling of the limitations period.

Applicant has presented nothing to put in question the magistrate judge's recommendation that the remaining claims be denied based on applicant's failure to establish any constitutional violation.

Therefore,

The court ACCEPTS the FC&R of the magistrate judge and ORDERS that applicant's claims 1 through 7 be, and are hereby, dismissed as time-barred, and that all relief sought by the remaining claims he has asserted in the document he filed June 5, 2008, titled "Petition for Writ of Habeas Corpus by a Person in State Custody" be, and is hereby, denied.

SIGNED May 27, 2009.

ONN MCBRYDE

Inited States District Judge